

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ABERCROMBIE & FITCH CO.,  
Plaintiff,

v.

Case No. 2:06-CV-831  
JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Terence P. Kemp

FEDERAL INSURANCE CO.,  
Defendant/ Third Party Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE  
CO. OF PITTSBURGH, PA.,  
Third Party Defendant.

**ORDER**

Plaintiff filed this action on October 2, 2006. The Defendant filed an Answer with Counterclaims, as well as a Third Party Complaint on October 20, 2006. (Doc. #11). The Plaintiff filed a Motion to Dismiss the Counterclaims on November 13, 2006. (Doc. #15). Following briefing of the motion, the Plaintiff filed an Amended Complaint, on May 15, 2007. (Doc. #59). The Defendant moves to dismiss Count VI of the Amended Complaint. (Doc. #60).

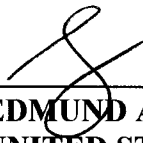
In the Court's view, the Plaintiff's original Motion to Dismiss the Counterclaims (**Doc. #15**) is **DENIED as moot** in view of Plaintiff's filing of an Amended Complaint. Once the Court resolves the Defendant's Motion to Dismiss Count VI of the Amended Complaint, it may be appropriate for Defendant to file an Amended Answer with Counterclaims. If appropriate, Plaintiff may then file a renewed Motion to Dismiss.

The Court notes that there is a pending Motion by the Third Party Defendant to Dismiss the Third Party Complaint. (Doc. #21). The Court will consider the merits of this motion by

separate Order. At this juncture, the Clerk is **DIRECTED** to remove **Doc. #15** from the Court's pending motions list.

**IT IS SO ORDERED.**

7-2-2007  
**DATE**

  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**